



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9919-55-OAR]

California State Motor Vehicle Pollution Control Standards; Malfunction and Diagnostic System Requirements for 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines; Request for Waiver Determination; Opportunity for Public Hearing and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Opportunity for Public Hearing and Comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted amendments to regulations entitled “Malfunction and Diagnostic System Requirements – 2004 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines” (OBD II Requirements) and amendments to regulations entitled “Enforcement of Malfunction and Diagnostic System Requirements for 2004 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines” (OBD II Enforcement Regulation). CARB adopted amendments to the OBD II Requirements through rulemakings in 1997, 2003, 2007 and 2010, and to the OBD II Requirements and OBD II Enforcement Regulation in 2012 and 2013. These amendments are collectively referred to herein as the OBD II Amendments. EPA previously granted California a waiver for the original OBD II Requirements, as last amended in 1995. EPA has also previously given notice and taken comments on the 1997 and 2003 OBD II amendments, but did not act on California’s waiver requests for those amendments. CARB now requests that EPA confirm that all the OBD II

Amendments be found within the scope of the previously granted waiver or, alternatively, that EPA grant a full waiver of preemption for the various amendments. This notice announces that EPA has tentatively scheduled a public hearing to consider California's requests for the 2007, 2010, 2012, and 2013 OBD II Amendments, and that EPA is additionally accepting written comment on California's waiver requests, and on the effect of the 2007, 2010, 2012, and 2013 OBD II Amendments on the prior 1997 and 2003 OBD II Amendments for which EPA previously took comments.

DATES: EPA has tentatively scheduled a public hearing concerning CARB's request on January 14, 2015 at 10 a.m. ET. EPA will hold a hearing only if any party notifies EPA by December 15, 2014 to express interest in presenting the Agency with oral testimony. Parties that wish to present oral testimony at the public hearing should provide written notice to David Read at the email address noted below. If EPA receives a request for a public hearing, that hearing will be held at the William Jefferson Clinton Building (North), Room 5530 at 1200 Pennsylvania Ave, NW, Washington, DC 20460. If EPA does not receive a request for a public hearing, then EPA will not hold a hearing, and will instead consider CARB's request based on written submissions to the docket. Any party may submit written comments until February 16, 2015.

Any person who wishes to know whether a hearing will be held may call David Read at (734) 214-4367 on or after December 17, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2013-0573, by one of the following methods:

- On-Line at <http://www.regulations.gov>: Follow the On-Line Instructions for Submitting Comments.

- Email: a-and-r-docket@epa.gov.
- Fax: (202) 566-1741.
- Mail: Air and Radiation Docket, Docket ID No. EPA-HQ-OAR-2013-0573, U.S. Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Please include a total of two copies.
- Hand Delivery: EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

On-Line Instructions for Submitting Comments: Direct your comments to Docket ID No. EPA-HQ-OAR-2013-0573. EPA's policy is that all comments we receive will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or email. The <http://www.regulations.gov> website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <http://www.regulations.gov>, your email address will automatically be captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and

with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

EPA will make available for public inspection materials submitted by CARB, written comments received from any interested parties, and any testimony given at the public hearing. Materials relevant to this proceeding are contained in the Air and Radiation Docket and Information Center, maintained in Docket ID No. EPA-HQ-OAR-2013-0573. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC. The Public Reading Room is open to the public on all federal government work days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566-1744. The Air and Radiation Docket and Information Center's Web site is <http://www.epa.gov/oar/docket.html>. The electronic mail (email) address for the Air and Radiation Docket is: a-and-r-Docket@epa.gov, the telephone number is (202) 566-1742, and the fax number is (202) 566-9744. An electronic version of the public docket is available through the federal government's electronic public docket and comment system. You may access EPA dockets at <http://www.regulations.gov>. After opening the <http://www.regulations.gov> website, enter EPA-HQ-OAR-2013-0573, in the "Enter

Keyword or ID” fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include CBI or other information whose disclosure is restricted by statute.

EPA’s Office of Transportation and Air Quality also maintains a webpage that contains general information on its review of California waiver requests. Included on that page are links to prior waiver and authorization *Federal Register* notices. The page can be accessed at <http://www.epa.gov/otaq/cafr.htm>.

FOR FURTHER INFORMATION CONTACT: David Read, Attorney, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone: (734) 214-4367. Fax: (734) 214-4212. Email: read.david@epa.gov.

SUPPLEMENTARY INFORMATION:

I. California’s OBD II Requirements and Enforcement Regulation

CARB initially adopted the OBD II Requirements in July 1990 and then adopted amendments in 1992, 1993, and 1995. The OBD II Requirements direct motor vehicle manufacturers to incorporate vehicle onboard diagnostic (OBD) systems meeting particular requirements on all new passenger cars, light-duty trucks, and medium-duty vehicles and engines. Specifically, manufacturers are required to install OBD II systems that effectively monitor all emission-related components and systems on the motor vehicle for proper operation and for deterioration or malfunctions that cause emissions to exceed specific thresholds. The regulations also require that OBD II systems provide specific diagnostic information in a standardized format through a standardized serial

data link on-board the vehicles to ensure that service and repair technicians can properly and promptly repair identified malfunctions.

In October 1996¹, EPA issued a waiver under section 209(b) of the Clean Air Act (“CAA” or “the Act”) for the OBD II Requirements adopted in 1990 and as amended in 1992, 1993, and 1995. CARB subsequently adopted further amendments to the OBD II Requirements in 1997 and 2003² and requested that EPA confirm those amendments to be within the scope of the previously granted OBD II waiver.³ EPA published a notice of opportunity for hearing and comment on the 1997 and 2003 California requests on February 5, 2004.⁴ The 1997 and 2003 waiver requests are currently pending a determination by EPA.

On August 9, 2007, CARB adopted additional amendments to the OBD II Requirements and minor amendments to the OBD II Enforcement Regulation. The amendments became operative on November 9, 2007. The 2007 OBD II Requirements amendments were made, *inter alia*, to address manufacturer compliance concerns and to align the monitoring requirements with those adopted by CARB in 2005 for heavy duty diesel engines. By letter dated January 22, 2008, CARB requested that EPA find that the 2007 amendments fall within the scope of the previous waiver.

¹ The decision was signed on October 2, 1996, and published at 61 FR 53371 (October 11, 1996).

² The Board initially approved the amendments at rulemakings held respectively on December 12, 1996, April 25, 2002, and September 28, 2006.

³ On December 24, 1997, CARB requested that the 1997 amendments be found within the scope of the previously granted waiver. On October 30, 2003, CARB requested that the 2003 amendments be found within the scope of the previously granted waiver. The October 30, 2003, request further asked that the OBD II Enforcement Regulation be found within the scope of the previously granted waiver for “California’s Enforcement of New and In-Use Vehicle Standards,” title 13, Cal. Code Regs. Section 2100 *et seq.* (see 61 FR 53371 (October 11, 1996), 43 FR 9344 (March 7, 1978), and 43 FR 25729 (June 14, 1978)).

⁴ See 69 FR 5542 (February 5, 2004).

On April 5, 2010, CARB adopted additional amendments to the OBD II Requirements, but not to the OBD II Enforcement Regulation. The amendments became operative on June 17, 2010. The 2010 OBD II Requirements amendments were made primarily to harmonize the medium-duty diesel vehicle requirements with proposed revisions to monitoring requirements for heavy duty diesel engines. By letter dated December 15, 2010, CARB requested that EPA find that the 2010 OBD II Requirements amendments fall within the scope of the previous waiver or, alternatively, that a new waiver be granted for the amendments.

On March 12, 2012, and on June 26, 2013, CARB adopted additional amendments to the OBD II Requirements and to the OBD II Enforcement Regulation. The 2012 OBD II amendments became operative August 7, 2012. The 2013 OBD II amendments became operative on July 31, 2013. The 2012 OBD II amendments were primarily made to relax and/or clarify OBD II requirements in response to manufacturer concerns. The 2013 OBD II amendments primarily affect medium-duty vehicles, to align the OBD II monitoring requirements with those adopted by CARB for heavy duty diesel engines. By letter dated February 12, 2014, CARB requested that EPA find that the 2012 and 2013 OBD II amendments fall within the scope of the previous waiver or, alternatively, that a full waiver be granted for the amendments.

The various amendments to the OBD II Requirements are codified at title 13, California Code of Regulations, section 1968.2. The various amendments to the OBD II Enforcement Regulation are codified at title 13, California Code of Regulations, section 1968.5.

CARB seeks a determination that the 2007, 2010, 2012, and 2013 OBD II Amendments are within the scope of the previous waiver or, alternatively, that EPA grant California a full waiver of preemption for the OBD II Amendments.

II. Clean Air Act Waivers of Preemption

Section 209(a) of the Clean Air Act preempts states and local governments from setting emission standards for new motor vehicles and engines. It provides:

No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No state shall require certification, inspection or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

Through operation of section 209(b) of the Act, California is able to seek and receive a waiver of section 209(a)'s preemption. If certain criteria are met, section 209(b)(1) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(a). Section 209(b)(1) only allows a waiver to be granted for any state that had adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the state determines that its standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards (*i.e.*, if such state makes a "protectiveness determination"). Because California was the only state to have adopted standards prior to 1966, it is the only state that is qualified to seek and receive a waiver.⁵ The Administrator must grant⁶ a waiver unless

⁵ See S.Rep. No. 90-403 at 632 (1967).

⁶ EPA's review of California regulations under section 209 is not a broad review of the reasonableness of the regulations or its compatibility with all other laws. Sections 209(b) and 209(e) of the Clean Air Act limit EPA's authority to deny California requests for waivers and authorizations to the three criteria listed

she finds that: (A) California’s above-noted “protectiveness determination” is arbitrary and capricious;⁷ (B) California does not need such state standards to meet compelling and extraordinary conditions;⁸ or (C) California’s standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act.⁹ EPA has previously stated that consistency with section 202(a) requires that California’s standards must be technologically feasible within the lead time provided, giving due consideration to costs, and that California and applicable Federal test procedures be consistent.¹⁰

If California amends regulations that were previously granted a waiver, EPA can confirm that the amended regulations are within the scope of the previously granted waiver. Such within-the-scope amendments are permissible without a full waiver review if three conditions are met. First, the amended regulations must not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as applicable federal standards. Second, the amended regulations must not affect consistency with section 202(a) of the Act. Third, the amended regulations must not raise any “new issues” affecting EPA's prior waivers.

III. EPA’s Request for Comments

EPA invites public comment on each of CARB's requests, including but not limited to the following issues.

therein. As a result, EPA has consistently refrained from denying California’s requests for waivers and authorizations based on any other criteria. In instances where the U.S. Court of Appeals has reviewed EPA decisions declining to deny waiver requests based on criteria not found in section 209(b), the Court has upheld and agreed with EPA’s determination. *See Motor and Equipment Manufacturers Ass’n v. Nichols*, 142 F.3d 449, 462–63, 466–67 (D.C.Cir.1998), *Motor and Equipment Manufacturers Ass’n v. EPA*, 627 F.2d 1095, 1111, 1114–20 (D.C.Cir. 1979). *See also* 78 FR 58090, 58120 (September 20, 2013).

⁷ CAA § 209(b)(1)(A).

⁸ CAA § 209(b)(1)(B).

⁹ CAA § 209(b)(1)(C).

¹⁰ *See, e.g.*, 74 FR 32767 (July 8, 2009); *see also* *Motor and Equipment Manufacturers Association v. EPA*, 627 F.2d 1095, 1126 (D.C.Cir. 1979).

A. 2007, 2010, 2012, and 2013 OBD II Amendments Within-the-Scope or Full Waiver

First, we request comment on whether CARB's 2007, 2010, 2012, and 2013 OBD II Amendments, whether individually or collectively assessed, should be considered under the within-the-scope analysis or whether they should be considered under the full waiver criteria. Specifically, we request comment on whether California's 2007, 2010, 2012, and 2013 OBD II Amendments (1) undermine California's previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as comparable Federal standards, (2) affect the consistency of California's requirements with section 202(a) of the Act, and (3) raise any other "new issue" affecting EPA's previous waiver or authorization determinations.

B. Whether 2007, 2010, 2012, and 2013 OBD II Amendments Meet the Criteria for Full Waiver

Should any party believe that the 2007, 2010, 2012, or 2013 OBD II Amendments do not merit consideration as within-the-scope of the previous waiver, EPA also requests comment on whether those amendments meet the criteria for full waiver. Specifically, we request comment on: (a) whether CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) whether California needs such standards to meet compelling and extraordinary conditions, and (c) whether California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Clean Air Act.

C. Effect of Newer OBD II Amendments on 1997 or 2003 Amendments

As stated above, EPA has previously given notice and taken comments on CARB's requests for within-the-scope determinations related to CARB's 1997 and 2003 OBD II amendments. As those requests are still pending, EPA will additionally take comment on any relevant effects of the 2007 and 2010 amendments on the prior 1997 and 2003 OBD II amendments. EPA will consider such comments in any decision on CARB's 1997 and 2003 OBD II amendments as well.

IV. Procedures for Public Participation

If a hearing is held, the Agency will make a record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until February 16, 2015. Upon expiration of the comment period, EPA will render a decision on CARB's request based on the record from the public hearing, if any, all relevant written submissions, and other information that the Agency deems pertinent. All information will be available for inspection at the EPA Air Docket No. EPA-HQ-OAR-2013-0573.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest extent possible and label it as "Confidential Business Information" ("CBI"). If a person making comments wants EPA to base its decision on a submission labeled as CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted to the public docket. To ensure that proprietary information is not inadvertently placed in the public docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of

confidentiality will be disclosed by EPA only to the extent allowed, and according to the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: November 12, 2014.

Christopher Grundler, Director,
Office of Transportation and Air Quality,
Office of Air and Radiation.

[FR Doc. 2014-27503 Filed 11/19/2014 at 8:45 am; Publication Date: 11/20/2014]